IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

The Director, Land & Building VS. State Bank of Bikaner & Jaipur, Tax, Jaipur & Anr.

D.B. CIVIL SPECIAL APPEAL NO.7/2006
against the judgment dt.19.8.2004 passed in S.B. Civil Writ Petition No.3480/2004.

Date of judgment : 16th Feb., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. L.R. Upadhyay for the appellants.
Mr. M.S. Singhvi for the respondent.

BY THE COURT:- (Per Hon'ble Mr. Rajesh Balia, J.)

This appeal relates to the order passed by learned Single Judge dismissing the writ petition filed by the present appellant in limine.

The facts relating to filing of the writ petition are that the land and buildings in question which is stated to be a training center for the employees of the respondent Bank and contains

residential units for its employees and trainers. It was assessed to tax first time under the Rajasthan Land and Building Tax Act, 1964 by order dated 24th March, 1994. The land in question was allotted to the respondent bank by UIT in 1984 forRs.5,20,536/-. The respondent has claimed before the Assessing Officer that the value of land for the purpose of tax be taken on the allotment price and not on the market price on the relevant dates. However, this plea was not accepted and value of land was assessed at Rs.35,65,900/-.

It may be pertinent to notice that the order dated 24.3.1994 was modified by order dated 28th March, 1994 finding that the land in question was purchased only in November 1983 from UIT and allotment was made for Rs.5,20,536/-. It was pointed out that as on 1.4.1984 the market value of the land in question was not and could not be, within six months of its acquisition, Rs.35,65,900/-. Finding this mistake apparent on the record, the order dated 24th March, 1994 was amended and the assessment of the property was made by taking the value as on 1.4.1984 at Rs.5,20,536/- and as on 1.4.1993, the value of the land was taken to be Rs.36,65,900/- and total land and

building was taxed as on 1.4.1993 at Rs.2,47,66,000/- on which tax liability at Rs.3,72,290/- was fixed. In furtherance of this order, the respondent assessee paid one time tax to free itself from further revision and liability to pay tax. These facts are not in dispute.

Thereafter an audit objection was raised that the land in question is used for commercial purpose and its market value should have been adopted at higher rate. The Assessing Officer vide his order dated 10.6.1996 passed a fresh assessment order by reverting back to the un-rectified order of assessment dated 24th March, 1994 adopting the market value of the property as on 1.4.1984 at Rs.35,65,900/- and the assessee's property at Rs.2,83,31,900/-.

On appeal, the Appellate Authority vide order dated 29.1.1997 set aside the order of reassessment finding that the Assessing Officer has not applied his mind before exercising jurisdiction under Section 15B of the Rajasthan Land and Building Tax and directed him to reconsider the question of reopening by considering whether any change in use of building has taken place and, whether because of such change it

comes within the purview of escapement assessment for forming its own opinion.

Pursuant to this direction, the Assessing Officer again issued notice vide order dated 20th Feb., 1997. In the order the Assessing Officer reiterated his order dt.10.6.1996 taking the land value as on 1.4.1984 at Rs.35,65,900/- and Assessment order was affirmed by the Appellate Authority i.e. Director, Land and Building Tax Rajasthan vide his order dated 26th Sept., 2002.

The foundation of these two orders was that since the building in question is being used for imparting training to the employees of the Bank and, therefore, the benefit of which is directly derived by the Bank, it is a commercial use of the property and, therefore, the market value of the land as on 1.4.1984 should be on the basis of commercial use of the land. No finding was recorded by the Assessing officer in pursuance of directions of Appellate order dt.29.1.1997 whether any change in user has taken place since the assessment was made on 24.3.1994 and which has resulted in the assessment at a low figure.

On further appeal before the Board of Revenue, the order of the Assessing Officer as well as Appellate Authority on reassessment were set aside by Divisional Commissioner, exercising power of Board of Revenue vide order dated 16.12.2003. He found that the building in question is used for imparting training to its employee and for their residences. No commercial activities were transacted at the building, hence it cannot be considered as commercial building for which the value of the land to be assessed at the rate applicable to the commercial land. The learned Divisional Commissioner took into consideration that the land was allotted in a residential colony to be used for non-commercial purposes and there has been nothing to suggest that the assessee has used the land allotted to it for commercial purposes in the residential area.

On this finding, the impugned orders of the Assessing Officer as well as Appellate Authority were set aside and the order dated 20th March, 1994 was restored. Since the assessee has already paid one time tax on the basis of assessment, no further demand was required to be paid by him.

The learned Single Judge vide judgment under appeal did not find any fault in the order of the learned Divisional Commissioner and dismissed the writ petition in limine. Hence, this appeal.

Having heard learned counsel for the parties factual position which emerges and about which no contrary finding has been recorded is that the building in question is being used for the purpose of residence of its employees who are there for training. It is used for imparting training to its own employees and for providing them residential facilities and the building is also used for providing training to the members of Scheduled Castes and Scheduled Tribes for pre-examination training free of cost which is a welfare activity conducted by the Bank and also free training is imparted to the employees of the rural banks and for holding seminars. None of these activities can be considered as a commercial activity. No banking business is transacted in the premises and, therefore, it cannot be said that the land and building is used for banking business by the assessee.

Apparently the land and building tax is a tax not on aggregate value of properties owned by a person

but on each building or independent unit owned by him.

If the criteria applied by the Assessing Officer and First Appellate Authority to treat the property as commercial is the indirect benefit to business derived by the assessee is correct, the residential accommodities provided to employees will also fall within the purview of commercial use, inasmuch as the residential accommodation too is provided by the employer for efficient and satisfied employees to benefit his business. However, that obviously cannot be the criterion for determining the question of classifying a property to be commercial or non-commercial use.

What is relevant for the purpose of determining the market value on the basis of which the amount of tax is to be determined is the property which can fetch the price, if sold in open market on the relevant date. In that regard, the geographical condition, the size, the locality and the nature of the land may be considered for determining the market value for the land in question. For example, if the land is situated in busy market notwithstanding the fact that the same was constructed for the

residential purposes and is being used for residence then market value will be determined taking into account the price which such building can fetch because it is situated in commercial locality. Likewise, the market price of an isolated building used for commercial purposes in the residential area cannot fetch a price what a land situated in busy market can fetch. Therefore, the basic premise on which the audit objection is founded, on which only reliance was placed by the Assessing Officer, suffers from error apparent. The Divisional Commissioner has found that the training activity was not carried on for commercial purposes. It is relevant to notice that part of the building complex only was used for imparting training to the bank's own employees and major part was used for providing residence to the employees and trainers within the campus of training center. The training to other class of persons vis. to members of Scheduled caste and Scheduled Tribes for taking examination which was also imparted free of cost and was a welfare activity of the Bank made available to the weaker sections of societies and for the employees of the Rural Banking that too without charging anything from them. The utilisation of the building without charging any fees for holding

periodical seminars and workshops also cannot be said to be a commercial activity of the bank from which any profit is derived.

Definition of establishment under Industrial Disputes Act cannot be injected into defining nature of building for the purpose of assessment of land and building tax under the Act of 1964.

It is also not in dispute that the land has been allotted by the UIT at market price in 1983 for a sum of Rs.5,20,536/-. Apparently as on 1.4.1984 the market price of the land in question could not be taken at Rs.35,65,900/- by any reason. Nothing has been brought on record by the Assessing Officer that within six months of allotment, market price of land in the area had increased almost seven times. We noticed that land value in question has been taken as on 1.4.1984.

Also keeping in view the fact that the order of remand by the Appellate Authority dated 29th Jan., 1997 clearly had direction that the reassessment be resorted to only if the assessing officer finds that there has been change in the user of the land. But

the Assessing Officer did not acted in furtherance of direction of Appellate Authority which was binding on him. The very fact that within 20 days of remand, the fresh assessment was made by reiterating his earlier assessment without complying with directions contained in the appellate order goes to show that the assessing officer was determined to act with close mind by pre-determining the issue.

In the totality of the circumstances,we are of the opinion that the finding reached by the Divisional Commissioner that the land and building in question is not used for commercial purposes and is not a commercial property is a finding of fact based on relevant consideration. It does not call for interference by this Court in extra-ordinary jurisdiction. Hence, no interference is called for in this appeal in the order of dismissal passed by learned Single Judge.

The appeal fails and is hereby dismissed. No order as to costs.

[R.P. VYAS], J. **[RAJESH BALIA], J.**

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